

60130-2034; 04ARM0127

**REMARKS**

Claims 1-9 and 11-19 are presently pending in the application. Claims 1 and 6 are in independent form. A third preliminary amendment was received by the United States Patent & Trademark Office on the same date as the mailing date of the July 12, 2006 office action. Although not considered, the third preliminary amendment was entered under the Rules, and the present amendment assumes its entry.

Claims 1-3, 5-6 and 10-11 were rejected under § 102(b) over Lawrence. Claims 14 and 15 were rejected under § 102(b) over Rutschmann. Amended Claim 1 includes the elements of Claim 10. Rutschmann discloses that a significant amount of the exhaust gas bypasses the valve 15 such that it never flows through the exhaust passage supporting the valve. Accordingly, the rejection of Claim 1 over Rutschmann has been overcome. Amended Claim 1 further recites that the valve increases a back pressure within the exhaust passage by increasingly blocking the exhaust passage with the valve. This feature is not shown in Lawrence and is contrary to its teachings. Specifically, Lawrence teaches that the valve maintains a low back pressure during its operation through all of the multiple positions. The purpose of the valve in the present invention is to increase back pressure when cylinders have been deactivated. Accordingly, the rejection of Claim 1 under Lawrence has been overcome.

Claim 6 is additionally allowable over Lawrence. Claim 6 requires the rod to move in a generally linear fashion. Lawrence discloses that both the actuator and the rod are rotated (and coupled by beveled gears 110, 112).

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